

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	§		
Clark R. Baker, Jr.	§	Group Art Unit:	3735
	§		
Serial No.: 10/796,566	§	Confirmation No.:	1089
	§		
Filed: March 8, 2004	§	Examiner:	Toth, Karen E.
	§		
For: PULSE OXIMETER WITH	§	Atty. Docket:	TYHC:0069/FLE/BAK
ALTERNATE HEART-RATE	§		009103-022600US
DETERMINATION	§		(P0426R)

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37 C.F.R. 1.8

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April 8, 2009
Date

/Jila Bakker/
Jila Bakker

Dear Sir:

COMMENTS ON STATEMENT OF REASONS FOR ALLOWANCE

In the Notice of Allowability attached to the Notice of Allowance mailed on January 12, 2009, the Examiner provided a statement of reasons for allowance. Although Applicant gratefully acknowledges the Examiner's allowance of the present claims, the Applicant does not necessarily agree with the Examiner's reasons for allowance. The Applicant believes that the claims are allowable at least because the prior art fails to disclose determining a first heart rate from a pulse oximetry signal using a first method; determining a second heart rate from the pulse oximetry signal using a second method; evaluating a reliability of the first heart rate using metrics applied to the pulse oximetry signal; using the first heart rate when the metrics indicate the first method is reliable; and using the second heart rate only when the metrics indicate that the first heart rate is unreliable. However, the missing claim features are not limited to the features recited by the Examiner in the statement of reasons for allowance. In addition, the dependent claims may also contain separately allowable subject matter. Further, the Applicant does not necessarily agree

with the Examiner's statements concerning what U.S. Patent Application No. 2002/0137994 and U.S. Patent No. 5,759,157 disclose.

Respectfully submitted,

Date: April 8, 2008

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